

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PETER MICHAEL ARENA,

Plaintiff,

v.

CERVANTES, *et al.*,

Defendants.

Case No. 1:21-cv-00928-JLT-BAM (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(ECF No. 38)

Plaintiff Peter Michael Arena (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Cervantes, Berlanga, Cerda-Jirano, Moreno, and Ceja for excessive force in violation of the Eighth Amendment.

Currently before the Court is Plaintiff’s motion for appointment of counsel, filed July 20, 2022. (ECF No. 38.) Plaintiff states that due to the complexities of this case and his mental and physical disabilities, he requests appointment of counsel to assist him in moving forward in the conclusion of this matter. Plaintiff suffers from severe bipolar disorder, brain damage, and several physical ailments, which make it extremely difficult to understand the complex laws in federal court. Plaintiff also takes medications which cause severe drowsiness, excessive sleep, and difficulty concentrating. Plaintiff states that he was deemed so mentally incompetent that in order for CDCR to stabilize him, he was placed on involuntary psychotropic medication and has

1 been in a psych service unit since 2007. Plaintiff has sought counsel many times since this suit
2 was filed and has only received one written response. Plaintiff believes that if the Court grants
3 his motion for counsel, this matter can be resolved much faster. Plaintiff has had help up to this
4 point in this case, but that help will no longer be available. Plaintiff has attached exhibits to his
5 motion, including letters seeking representation and medical records demonstrating his
6 involuntary medication. (*Id.*)

7 Defendants have not yet had an opportunity to respond to Plaintiff's motion, but the Court
8 finds a response unnecessary. The motion is deemed submitted. Local Rule 230(l).

9 Plaintiff is informed that he does not have a constitutional right to appointed counsel in
10 this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev'd in part on other*
11 *grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to
12 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist. Court for the S. Dist.*
13 *of Iowa*, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may
14 request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at
15 1525.

16 Without a reasonable method of securing and compensating counsel, the Court will seek
17 volunteer counsel only in the most serious and exceptional cases. In determining whether
18 "exceptional circumstances exist, a district court must evaluate both the likelihood of success on
19 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
20 complexity of the legal issues involved." *Id.* (internal quotation marks and citations omitted).

21 The Court has considered Plaintiff's request, but does not find the required exceptional
22 circumstances. Even if it is assumed that Plaintiff has made serious allegations which, if proved,
23 would entitle him to relief, his case is not exceptional. This Court is faced with similar cases filed
24 almost daily by prisoners who are suffering from physical or mental health conditions or are
25 taking psychotropic medications. These plaintiffs also must litigate their cases without the
26 assistance of counsel.

27 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
28 Plaintiff is likely to succeed on the merits. Although the Court found that Plaintiff stated some

1 cognizable claims in the complaint, the Court cannot say that those claims have a likelihood of
2 ultimately being successful in the face of a motion or summary judgment or trial. Finally, based
3 on a review of the record in this case, the Court does not find that Plaintiff cannot adequately
4 articulate his claims.

5 Accordingly, Plaintiff's motion for appointment of counsel, (ECF No. 38), is HEREBY
6 DENIED, without prejudice.

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8 IT IS SO ORDERED.

9 Dated: July 21, 2022

/s/ Barbara A. McAuliffe
10 UNITED STATES MAGISTRATE JUDGE
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